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# *County of San Diego*

## **CITIZENS' LAW ENFORCEMENT REVIEW BOARD**

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### **REGULAR MEETING AGENDA**

### **TUESDAY, May 14, 2013, 5:30 P.M.**

### **San Diego County Administration Center**

### **1600 Pacific Highway, Room 302/303, San Diego, 92101**

Pursuant to Government Code Section 54954.2 the Citizens' Law Enforcement Review Board will conduct a meeting at the above time and place for the purpose of transacting or discussing business as identified on this agenda. Complainants, subject officers, representatives or any member of the public wishing to address the Board on any of today's agenda items should submit a "Request to Speak" form to the Administrative Secretary prior to the commencement of the meeting.

#### **DISABLED ACCESS TO MEETING**

A request for a disability-related modification or accommodation, including auxiliary aids or services, may be made by a person with a disability who requires a modification or accommodation in order to participate in the public meeting. Any such request must be made to Ana Becker at (619) 238-6776 at least 24 hours before the meeting.

#### **WRITINGS DISTRIBUTED TO THE BOARD**

Pursuant to Government Code 54957.5, written materials distributed to CLERB in connection with this agenda less than 72 hours before the meeting will be available to the public at the CLERB office located at 1168 Union Street, Suite 400, San Diego, CA.

#### **1. ROLL CALL**

#### **2. MINUTES APPROVAL**

- a) Minutes of the April 2013 Regular Meeting (*Attachment A*)

#### **3. PRESENTATION / TRAINING**

- a) N/A

#### **4. EXECUTIVE OFFICER'S REPORT**

- a) Workload Report - Open Complaints/Investigations Report (*Attachment B*)

#### **5. NEW BUSINESS**

- a) Swearing in of new Board Member, James Lasswell

## 6. UNFINISHED BUSINESS

- a) N/A

## 7. BOARD MEMBER COMMENTS

## 8. PUBLIC COMMENTS

- a) This is an opportunity for members of the public to address the Board on any subject matter that is within the Board's jurisdiction. Each speaker should complete and submit a "Request to Speak" form to the Administrative Secretary. Each speaker will be limited to three minutes.

## 9. SHERIFF / PROBATION LIAISON QUERY

## 10. CLOSED SESSION

- a) **Discussion & Consideration of Complaints & Reports / Officer Discipline Recommendation:** Pursuant to Government Code Section 54957 to hear complaints or charges brought against Sheriff or Probation employees by a citizen (unless the employee requests a public session). Notice pursuant to Government Code Section 54957 for deliberations regarding consideration of subject officer discipline recommendation (if applicable).

- 12-057 / Salazar (Sustained – Deputy 1)

DEFINITION OF FINDINGS	
Sustained	The evidence supports the allegation and the act or conduct was not justified.
Not Sustained	There was <u>insufficient evidence</u> to either prove or disprove the allegation.
Action Justified	The evidence shows the alleged act or conduct did occur but was lawful, justified and proper.
Unfounded	The evidence shows that the alleged act or conduct did not occur.
Summary Dismissal	The Review Board lacks jurisdiction or the complaint clearly lacks merit.

## CASES FOR SUMMARY HEARING (8)

### ALLEGATIONS, RECOMMENDED FINDINGS & RATIONALE

#### 11-051

1. Death Investigation / Suicide – Deputy 1 found Inmate Sean Wallace in his cell hanged by the neck with a sheet attached to the bed frame.

Recommended Finding: Action Justified

Rationale: The decedent repeatedly made suicidal statements to detentions staff to control his housing placement. Each time Wallace stated a desire to hurt himself, detentions staff responded, per Policy J.5, Inmate Suicide Prevention Practices, and Policy J.1, Safety Cells, and escorted him to medical for an evaluation and safety cell placement. During his last safety cell placement, Wallace reported to medical staff that he was “okay”, “doing fine”, and not feeling suicidal, resulting in him being cleared from safety cell placement by the facility’s psychiatric professional staff and returned to mainline housing. Wallace was found hanged shortly after being returned to mainline housing, and was unresponsive to the resuscitative efforts of deputies and medical staff. He was pronounced deceased at the scene. The Medical Examiner attributed the death to hanging, and the manner to be suicide. Detentions staff responded according to Department policy and procedure each time Wallace expressed suicidal ideations. There was no evidence to support an allegation of misconduct or

negligence on the part of Sheriff's Department personnel. The actions of deputies were lawful, justified and proper.

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## **12-044**

1. Misconduct/Procedure – Deputy 2 neglected calls to aid an inmate in distress.

Recommended Finding: Not Sustained

Rationale: The complainant stated that inmates in Transfer Holding Cell #1 had tried to get medical attention for an inmate for an extended period of time without success. Deputy 2 was assigned as the Intake Control Deputy and did not recall any calls over the intercom between the Transfer Holding Cell #1 and Intake Control. There was no video surveillance or documentation of a reported man down in Intake Control. Video surveillance did show Deputies 3 and 4 approach Transfer Holding Cell #1, and take action to enter the cell and provide assistance. There are no video or audio recordings to document the time it took Deputies 3 and 4 to respond to the man down in Transfer Holding Cell #1. There was insufficient evidence to either prove or disprove the allegation.

2. Excessive Force – Deputy 4 pushed the complainant in a holding cell.

Recommended Finding: Not Sustained

Rationale: Deputy 4 denied that he pushed the complainant as he entered the holding cell. Deputy 4 said he opened the cell door to Transfer Holding Cell #1 and directed that all inmates move away from an inmate in need of medical attention. The complainant claimed he did comply with Deputy 4's direction, but was pushed away without provocation. There was insufficient evidence to either prove or disprove the allegation.

3. Excessive Force – Deputies 3 and 4 grabbed and twisted the complainant's arms "with a hard shift upward."

Recommended Finding: Action Justified

Rationale: Deputy 4 pulled the complainant out of Transfer Holding Cell #1 and into the hallway. Video surveillance showed that complainant appeared to be resisting Deputy 4's efforts to remove him from the Holding Cell. Deputy 3 assisted Deputy 4 in regaining control of the complainant and placed him into handcuffs. Video evidence showed Deputy 3 controlled the complainant's left arm, and Deputy 4 controlled his right arm. There was no evidence to show that the complainant's arms were twisted or subject to a hard shift upward. Deputies 3 and 4 used reasonable and necessary force to overcome the complainant's active resistance per Department Procedure 6.48, Physical Force, and Detentions Policy I.89, Use of Force. Their evidence showed their conduct was lawful, justified and proper.

4. Excessive Force – Deputy 4 forced a hard knee to the complainant's head which caused his face to impact the floor.

Recommended Finding: Action Justified

Rationale: Deputy 4 denied forcing his knee to the complainant's head which caused his face the impact the floor. Deputy 4 stated he did however, use his left knee on the complainant's lower back and used his own body weight to prevent the complainant from getting up or attempt to break free from his hold. Video evidence confirmed Deputy 4 actions, but did not show the complainant's face hitting the floor. Based on the circumstances, Deputy 4 used reasonable and necessary force to overcome the complainant's active resistance per Department Procedure 6.48, Physical Force, and Detentions Policy I.89, Use of Force. The evidence showed that the conduct was lawful, justified and proper.

5. Misconduct/Procedure – Deputy 1 of Internal Affairs rejected the allegation of his complaint of excessive force.

Recommended Finding: Action Justified

Rationale: Deputy 1 received and responded to the complainant's request for investigation as required by Department Policy and Procedure, Section 3.2, Complaints Against Sheriffs. Deputy 1 reported that there had

been no evidence of employee misconduct and declined to conduct a formal investigation. The evidence showed that the alleged act did occur but was lawful, justified and proper.

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## **12-050**

1. Misconduct/Procedure – Deputy 1 placed the complainant into Administrative Segregation without explanation and/or cause.

Recommended Finding: Action Justified

Rationale: Deputy 1 directed the assignment to Administrative Segregation because the complainant approached a deputy and stated he feared for his life. The complainant's incarceration history revealed previous assignment to Administrative Segregation because of similar statements, demonstrated that he had exhausted other housing options at the facility, and noted a continual inability or unwillingness to adjust to the minimum standards expected. Deputy 1 assigned the complainant to Administrative Segregation for his own safety in accordance with Department Policy and Procedure J.3, Segregation Definition and Use. The evidence showed that the alleged act did occur, but was lawful, justified and proper.

2. Misconduct/Procedure – Deputies 2 and 3 did not respond to the complainant's 14 grievances.

Recommended Finding: Action Justified

Rationale: The complainant alleged that deputies failed to respond to his grievances. The complainant's grievances asserted his innocence, stated he was entrapped by local law enforcement, and ordered staff to release him from custody. Per Department Policy and Procedure N.1, Grievance Procedures, grievances are accepted for allegations of unfair or unlawful jail practices. The complainant's grievances did not address jail practices and were determined to be frivolous. Deputies 2 and 3 formally responded to a combined 14 grievances as required by Department Policy and Procedure. The evidence showed that the alleged act did occur, but was lawful, justified and proper.

3. Misconduct/Procedure – Deputy 2 classified the complainant as a "Vexatious Grievance Writer."

Recommended Finding: Action Justified

Rationale: Deputy 2 designated the complainant a Vexatious Grievance Writer because he submitted 14 grievances that did not allege unfair or unlawful jail practices. The complainant's grievances asserted his innocence, stated he was entrapped by local law enforcement, and ordered staff to release him from custody. Deputy 2 determined these grievances to be frivolous per Department Policy and Procedure N.1, Grievance Procedures. The evidence showed that the alleged act did occur, but was lawful, justified and proper.

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## **12-072**

1. Misconduct/Medical – Deputy 1 and/or medical staff denied the complainant use of his orthopedic inserts.

Recommended Finding: Summary Dismissal

Rationale: Sworn detentions staff is not involved in the approval of medical devices for inmate patients. This is a function performed by non-sworn medical staff over whom CLERB has no jurisdiction. This matter was referred back to the Sheriff's Department for further investigation.

2. Misconduct/Procedure – Deputy 1 failed to respond to the complainant's grievances regarding his orthopedic shoes.

Recommended Finding: Action Justified

Rationale: The complainant filed several grievances requesting the provision of his orthopedic shoes. In each instance, Deputy 1 collected and forwarded the grievances to medical staff, who informed the complainant that he was scheduled to be evaluated in medical sick call. Pursuant to N.01, Grievance Procedure, detentions staff

acted within policy in their responses to the complainant's filed grievances. The evidence shows the alleged act or conduct did occur, but was lawful, justified and proper.

3. Misconduct/Medical – San Diego Sheriff's Department failed to provide the complainant his prescribed medication for pain treatment because they ran out.

Recommended Finding: Summary Dismissal

Rationale: Medical issues brought forth by the complainant are addressed by non-sworn medical staff and do not fall under CLERB's jurisdiction. This matter was referred back to the Sheriff's Department for further investigation.

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## **12-078**

1. Discrimination – San Diego Sheriff's Department has discriminatory hiring practices.

Recommended Finding: Summary Dismissal

Rationale: The complainant believed San Diego Sheriff's Department disqualified him from consideration for employment because he was an older divorced man with a credit history and previous employment termination. Sheriff's Department Procedure 3.47, Discrimination and Sexual Harassment, prohibits the unequal treatment of employees or applicants for employment (without adequate justification). The San Diego County Civil Service Commission is the agency charged to investigate complaints of violation of Charter Section 901, Employment Policy, and the complainant has been referred to that agency for resolution. The Review Board lacks jurisdiction.

2. Misconduct/Discourtesy – Deputy 1 was rude and discourteous to the complainant when questioned about his employment application process.

Recommended Finding: Not Sustained

Rationale: This allegation is subjective in nature regarding discourtesy. The complainant said that Deputy 1 was verbally hostile and combative during their contact. Deputy 1 stated that the complainant was angry, lecturing, and demanding, and she responded in a strong and direct manner. Deputy 1 refuted this allegation and there were no witnesses to the entire conversation to either support or refute the information. There is insufficient evidence to prove or disprove this subjective allegation.

3. Misconduct/Truthfulness – Deputy 1 provided inaccurate information to her supervisor during an Internal Affairs investigation.

Recommended Finding: Not Sustained

Rationale: The complainant believed that Deputy 1 told her supervisor that he had been argumentative during their conversation, a statement he believed to be untrue. The complainant stated that he spoke to Deputy 1 in a calm, normal, and non-confrontational tone. Deputy 1 offered a differing account of what occurred and stated that the complainant became angry while discussing elements of his orientation package. There was insufficient evidence to either prove or disprove the allegation.

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## **12-098**

1. Death Investigation / Officer Involved Shooting - Deputy 1 shot and killed Anthony Dunton.

Recommended Finding: Action Justified

Rationale: There was no complaint of wrongdoing in this death investigation. Following a Use of Force incident at the jail, Anthony Dunton was at a hospital receiving treatment for his injuries. While there, Dunton slipped out of his waist chains and used the 32-inch chain as a weapon to strike deputies. Deputies deployed non-lethal force, which proved ineffective. Dunton had an opportunity to flee, but instead continued his attack against

deputies. The use of deadly force was reasonable and necessary to prevent loss of life of deputies and medical staff. The evidence shows Deputy 1's conduct was in direct response to Inmate Dunton's unlawful behavior and the use of deadly force was necessary, lawful, justified and proper. The investigation also determined that use of department approved force techniques by Deputies 2-7, prior to the shooting, was also reasonable and necessary.

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## **12-104**

1. Excessive Force – Deputies 1-3 repeatedly assaulted the disabled complainant.

Recommended Finding: Summary Dismissal

Rationale: The complainant is transient, has failed to maintain contact with CLERB, and his whereabouts are unknown. A search of local and state databases also failed to reveal his location. Due to the complainant's non-cooperation in maintaining contact, this case will be closed without further investigation.

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## **12-148**

1. False Arrest – Deputy 1 arrested the complainant based on inaccurate information regarding a probation violation.

Recommended Finding: Summary Dismissal

Rationale: The San Diego Police Department was the Arresting Agency in this matter. The Review Board does not have jurisdiction over the subject matter of the allegation.

2. Misconduct/Procedure - Deputy 1 failed to provide an arrest report.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1

3. Illegal Search or Seizure – Deputy 1 detained the complainant prior to a probation violation.

Recommended Finding: Action Justified

Rationale: On October 18, 2012, the complainant was arrested and subsequently detained for violating conditions of his probation. Pursuant to Penal Code § 3453(q), Post Release Community Supervision; Conditions, the complainant was to serve up to 10 days of flash incarceration. On October 22, 2012, the Probation Department petitioned to revoke the complainant's probation due to his violation of post release community supervision conditions, and requested his continued detention, per Penal Code § 3455, Post Release Community Supervision; Revocation. The evidence showed that the act did occur, but was lawful, justified and proper.

4. Misconduct/Procedure – Deputy 1 detained the complainant beyond appropriate legal limits.

Recommended Finding: Action Justified

Rationale: On October 29, 2012, the complainant was arrested while in custody and rebooked on charges of Penal Code §§ 484, Petty Theft, and 594, Malicious Mischief; Vandalism. The San Diego Superior Court summarily revoked the complainant's probation, and he was remanded to the custody of the sheriff with pending court action against him. The complainant appeared before the court on four successive occasions where his probation remained Summarily Revoked and he was remanded to custody. Unidentified deputies took and maintained custody of the complainant in accordance with Detentions Policy and Procedure Q.21, Superior Court Warrants and Grand Jury Indictments, and Court Services Bureau Policy and Procedures C.5, Court Ordered Remands. The evidence showed that the acts did occur, but were lawful, justified and proper.

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*End of Report*